IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 19TH JUNE 2007 / 29TH JYAISHTA 1929

ST.Rev..No. 35 of 2003()

TA.355/1995 of SALES TAX APPELLATE TRIBUNAL, ADDL.BENCH, KOZHIKODE
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REVISION PETITIONER/APPELLANT/APPELLANT:

M/S. RADIANT BATTERIES,
KORAPUZHA, ELATHUR, KOZHIKODE.

BY ADV. SRI.T.M.VELAYUDHAN
SRI.B.V.JOY SANKER
SMT.JALAJA SREENIVASAN
SRI.Y.GEORGE
SMT.SHARMILA SUKUMARAN

RESPONDENT: RESPONDENT/RESPONDENT:

STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY,
GOVT.SECRETARIAT, THIRUVANANTHAPURAM.

BY SPL.GOVERNMENT PLEADER (TAXES) MR.V.V.ASOKAN

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 19/06/2007, ALONG WITH STRV NO. 83 OF 2003 STRV NO.86 OF 2003 STRV NO. 90 OF 2003 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

S.T.Rev.Nos.35, 83, 86 & 90 of 2003

Dated, this the 19th day of June, 2007

ORDER

H.L.Dattu, C.J.

All these revision petitions are clubbed together, heard and disposed of by this common order.

2. The assessee calls in question the orders passed by the Kerala Sales Tax Appellate Tribunal, Kozhikode in T.A.Nos.355, 356, 357 and 358 of 1995. These revision petitions pertain to the assessment years 1986-87 to 1989-90. The assessee is a dealer registered under the provisions of the Kerala General Sales Tax Act. He is doing business in the manufacture and service of batteries. For the assessment years in question, he had filed his annual returns and declared the actual turnover and the taxable turnover. The assessing authority keeping in view the report of the inspecting wing of the department had rejected the returns filed by the assessee and had passed a best judgment assessment. While doing so, the assessing authority had computed the tax liability by adding the amount of Rs.4,31,213.58 to the total turnover and had imposed a tax liability to the tune of Rs.80,353.00 and the said order was again revised on the ground that the purchase turnover under Section 5A of the Act had been omitted while completing the original assessment.

3. In the appeals filed by the assessee, the appellate authority had modified the orders of assessment passed for the aforesaid assessment years by adding only three times the suppressed turnover.

4. The revenue had carried the matter by way of second appeal before the Tribunal. The Tribunal in order to come to a proper conclusion had directed the assessing authority to produce the assessment records. In spite of the said direction, the assessing authority had failed to produce the assessment records. In the absence of those records, the Tribunal once again quantified the tax liability of the assessee by making yet another best judgment assessment. Aggrieved by the said order of the Tribunal the assessee is before us in these revision petitions.

5. The assessee has raised several questions of law for our consideration and decision. We do not intend to go into those questions framed by the assessee for the reason that when the Tribunal had directed the assessing authority to produce the assessment records to verify the correctness or otherwise of the additions made, in the absence of such books of accounts the Tribunal would not be justified in once again passing a best judgment assessment, that too in the appeals filed by the revenue.

6. As we have already stated, the assessing authority after rejecting the books of accounts and based on the report of the Intelligence wing of the department passed a best judgment assessment and that had been modified by the first appellate authority. If for any reason the revenue was aggrieved by the said orders passed by the first appellate authority, it ought to have produced the assessment records before the Tribunal to justify the additions made by it. Since that had not been done, the only course that was open to the Tribunal was to confirm the orders passed by the first appellate authority. That has not been done in the instant case. Therefore, we have no other alternative but to allow the revision petitions filed by the assessee and set aside the orders

passed by the Tribunal and confirm the orders passed by the first appellate authority. Ordered accordingly.

7. In view of the order passed in the revision petitions, the relief sought in the civil miscellaneous petitions need not be considered by this Court. Accordingly the said C.M.Ps. are rejected.

(**H.L.DATTU)**
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

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